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IN THE

Supreme Court of the United States

October Term, 1969

No. 1529

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, and LODGE 844 of the BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
Petitioners,

v.

GARY S. HANSEN, et. al., for himself and for and on behalf of 191 other similarly situated,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

The Respondents respectfully pray that the Petition for a Writ of Certiorari to review the judgment and opinion of the Supreme Court of the State of Utah, entered in this proceeding on Febuary 13, 1970, be denied.

I. QUESTION PRESENTED

Petitioners, by means of various offers and representations, induced respondents, employees of the Kennecott Copper Corporation, to join, pay dues to, and perform the duties of membership in the Brotherhood of Locomotive Firemen and Enginemen (hereinafter "BLF&E") and Lodge 844 of the Brotherhood (hereinafter "the Local" or "Lodge 844"). Chief among the representations upon which respondents relied was petitioners' guarantee that, regardless of whether the BLF&E was certified as their bargaining representative, petitioners would pay to respondents specified "strike benefits" (cash in lieu of wages while on strike) in the event of a strike at Kennecott. The expected strike occurred. The promised benefits were not paid to respondents, although they were paid to all other members of petitioners participating in the strike. This action was tried before the District Court of Salt Lake County, Utah, which awarded damages to respondents for breach of contract and breach of fiduciary duty, in strict conformity with the schedule of strike benefits promised to respondents and actually paid to all other striking members of petitioners. The Supreme Court of Utah affirmed.

This action does not involve federally pre-empted matters, and the propriety of the jurisdiction exercised by the state courts is well established by prior decisions of this Court.

II. STATEMENT OF THE CASE

The District Court entered the following Findings of Fact, among others, in its adjudication of the above-entitled action:

> 4. In or about September 1966, [petitioners] initiated an organizational campaign among employees of Kennecott Copper Corporation ("Kennecott"), intended and designed to attract [respondents] and other employees of Kennecott into membership in said . . . unions.
>
> 5. As part of this organizational campaign, [petitioners], through various of their officers, *including BLF&E international officers, general organizers and other authorized representatives, repeatedly represented, promised and guaranteed* to [respondents], both orally and in writing, that [respondents] would receive strike benefits, varying from $90.00 to $150.00 per month per man (according to the number of his dependents) in the event they joined [petitioners] and a strike occurred at Kennecott.
>
> 6. During at least the final three months of this organizational campaign, authorized representatives of [petitioners] represented to [respondents] that they would be paid said strike benefits *regardless of the outcome of the then forthcoming representation election*, held June 20-21, 1967; at no time during said campaign did [petitioners] or any of their said authorized representatives condition the payment of said strike benefits upon BLF&E success in said representation campaign or election or upon any factor other than [respondents'] membership in defendants.
>
> 7. [Respondents], induced by and in reliance upon these and other offers, representations and guarantees, *and particularly those regarding strike benefits*, accepted said offers, joined as members of [petitioners] and thereafter performed all obligations and duties required of members, including payment

of dues, attendance at meetings and service of picket duty [subsequent to the representation election which petitioners had lost].

• • • •

10. From July 15, 1967, to March 29, 1968, [respondents], among other Kennecott employees, engaged in a strike at the Kennecott properties in Utah, which strike was authorized and engaged in by [petitioners] and other unions at Kennecott.

11. Immediately after the commencement of the strike at Kennecott on or about July 15, 1967, by [petitioners] and the other unions representing employees at Kennecott, [respondents] reported to [petitioners'] strike headquarters and signed for and served picket duty for [petitioners] and informed the local lodge financial secretary of the number of their dependents for the purpose of receiving strike benefits from [petitioners].

12. Shortly thereafter, and toward the end of July, 1967, [respondents] were included, among all members of [petitioner] Lodge 844, on a duly certified and authorized strike payroll submitted by the officers of . . . Lodge 844 to . . . BLF&E *for the payment of promised strike benefits.* . . . [Respondents] were stricken from this strike payroll by H. E. Gilbert, President of [petitioner] BLF&E, and were refused any and all strike benefits whatever. . . . Cited in *Petition for Certiorari* at pp. 21-24. (Emphasis added.)

Briefly, the trial court found that authorized union representatives promised the respondents that if they would join the BLF&E, they would be paid full strike benefits in the event of a strike at Kennecott. Petitioners, in reliance on those promises, joined the BLF&E — and, in many cases, resigned from another union, thus disqualifying themselves from alternative strike benefits (e.g., R.

1078-79, 1092, 1120). The international union wilfully and admittedly refused to honor its representatives' admitted promises.

These findings are amply supported by the record. Indeed, for the most part, these facts were not even disputed by petitioners and were stipulated to as a matter of record (R. 1060-62). Certain factual allegations contained in the petition, which "state" the facts as petitioners wish they were, are inconsistent with, or flatly contrary to, the records and the findings of the District Court. In the first paragraph of page 4 of the petition, it is claimed: "Employees who joined [the BLF&E] . . . were promised strike benefits according to the BLF&E Constitution if they would join and vote for BLF&E representation." The record clearly supports, and the trial court found, that respondents were "promised and guaranteed" strike benefits of varying amounts, according to the number of their dependents, if they joined the union. *The guarantee was not qualified in any way.* Further, the guarantee was not conditioned upon respondents voting for BLF&E in the representation election as is asserted in the petition.

Petitioners attempt, in the second paragraph of page 4 of the petition, to brush off their guarantees as the "representations of some of the BLF&E organizers" in March, 1967. This statement grossly misrepresents the record and the findings of the trial court that union officers, "including BLF&E international officers, general organizers and other authorized representatives, repeatedly represented, promised and guaranteed" those strike benefits during "at least the final three months" of the organizational drive (i.e., the months of April, May and June). *Findings of Fact*, Nos. 5 and 6, *supra*. Indeed, it is clear that the

promises were made with the knowledge of the local president (Exhibit P-51) and were personally authorized by the BLF&E International President (R. 576-757 and Exhibits P-8, 41 and D-162, 163).

Petitioners, in the fourth paragraph of page 4 of the petition, claim: "The BLF&E called the members in its bargaining unit [which, according to the petition, excludes the respondents] on strike per authorization by its International President . . . [on] July 15, 1967." The strike order, a telegram received in evidence at the trial, was not so limited: It expressly authorized Local 844 *and its members* (including respondents) to go on strike. (Exhibit P-138.)

Petitioners' assertion, unsupported by record reference, in the first paragraph of page 5 of the petition that the strike payroll was rejected by the International President because of union constitutional considerations is irrelevant. Similarly, the claim in the third paragraph of page 5 that the International President based his refusal upon some legislative history of the union constitution is competely immaterial to the trial court's finding that the petitioners had entered into a binding contract with respondents. It is further immaterial to the issues raised in the Petition for Certiorari.

III. ARGUMENT

1. THE ISSUES OF THIS ACTION CLEARLY ARE NOT GOVERNED BY THE NATIONAL LABOR RELATIONS ACT.

The courts below found that respondents joined petitioner unions in reliance upon the unions' guarantees that

they would be paid certain moneys by the unions in the event of a strike regardless of whether or not the BLF&E were certified as respondents' collective bargaining agent. The lower courts held that these guarantees, accepted by respondents' joining, paying dues to and otherwise supporting petitioners, constituted a contract under Utah law and that the contract was breached; relief was granted accordingly.

Petitioners premise their application for certiorari on the argument that

> . . . Congress vested the National Labor Relations Board with the duty and the authority to resolve questions concerning representation affecting interstate commerce. (29 U.S.C. §159). With reference to employers engaged in or affecting interstate commerce as defined in the National Labor Relations Act (29 U.S.C. §152[6] and [7]), it is clear that the NLRB procedures for resolving questions concerning representation are exclusive. *Petition*, pp. 7-8.

This action does not involve, however indirectly, any question relevant to the collective bargaining process. It is not a representation dispute within the meaning of 29 U.S.C. §159. Further, it involves no question which is the subject of NLRB jurisdiction under 29 U.S.C. §160, there being no allegation or finding of any act by the unions or employer which could constitute an unfair labor practice.

Title 29, Section 160 states: "The Board is empowered... to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce." No act is here involved which conceivably could have constituted an unfair labor practice within the meaning of 29 U.S.C. §158. Indeed, this action does not even

involve a "labor dispute" within the meaning of the National Labor Relations Act.[1] The outcome of this action could not in any way affect the terms or conditions of any person's employment or the structure of collective bargaining representation at Kennecott Copper Corporation. Only one question was before the District Court and the Supreme Court of Utah: Was a contract for the payment of unemployment compensation in the event of a strike entered into by the parties? The fact that the defendants were trade union organizations was merely incidental to that question.

2. THERE IS NO DIVISION OF AUTHORITY AS TO THE STATE COURT'S JURISDICTION OVER THIS ACTION.

This Court has held and reiterated that federalism

> . . . has required us not to find withdrawal from the States of the power to regulate where the activity regulated was merely a peripheral concern of the Labor Management Relations Act. [Citation omitted.] Or where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of competing congressional discretion, we could not infer that Congress had deprived the States of the power to act. *San Diego Building Trades Council, et al. v. Garmon*, 359 U.S. 236, 243-244, 79 S.Ct. 773, 779, 3 L.Ed.2d 775 (1959). Cited in *Linn v. United Plant Guard Workers of America, Local No. 114*, 383 U.S. 53, 59, 86 S.Ct. 657, 661, 15 L.Ed.2d 582 (1966).

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[1]The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. 29 U.S.C. §152(9).

This case involves a plain state question under either of the alternative criteria of *Garmon* and *Linn*. The issues raised by it do not amount to allegations of an unfair labor practice or a representation dispute within the meaning of the National Labor Relations Act; nor do they involve activity even "peripheral" to the Act. Further, it is difficult to imagine an area more "deeply rooted in local feeling and responsibility" than the enforcement by a State of its citizens' contract rights. Congress has conferred no competing jurisdiction upon the National Labor Relations Board. Indeed, the Board is without authority to award legal damages as would be appropriate to enforcement of a contract. *Linn v. United Plant Guard Workers etc.*, 383 U.S. at 63, 86 S.Ct. at 663.

This Court has held that a party to a labor dispute (within the definition of 29 U.S.C. §152[9]) may sue in local courts to recover damages for libelous statements made about him during an organizational campaign. *Linn v. United Plant Guard Workers, supra.* It has held that a union member may recover, in state courts, damages founded on breach of contract for wrongful expulsion from his union, *International Ass'n of Machinists v. Gonzales,* 356 U.S. 617, 78 S.Ct. 923, 2 L.Ed.2d 1018 (1958), and that an employee may sue a union in state courts for malicious interference with his employment, *International Union, United Automobile, etc. Workers v. Russell,* 356 U.S. 634, 78 S.Ct. 932, 2 L.Ed.2d 1030 (1958).

Petitioners' assertion that the result of this case could somehow conflict with the purposes of the National Labor Relations Act echoes the same argument raised by petitioners in the *Gonzales* case, *supra.* The Court's analysis of

the rights of an expelled union member in *Gonzales* applies with equal force to the rights of respondents:

> If, as we held in the Laburnum case, [*United Construction Workers, etc. v. Laburnum Const. Corp.*, 347 U.S. 656, 74 S.Ct. 833, 98 L.Ed 1025 (1954)] certain state causes of action sounding in tort are not displaced simply because there may be an argumentative coincidence in the facts adducible in the tort action and a plausible proceeding before the National Labor Relations Board, a state remedy for breach of contract also ought not be displaced by such evidentiary coincidence when the possibility of conflict with federal policy is similarly remote.... [T]he potential conflict is too contingent, too remotely related to the public interest expressed in the Taft-Hartley Act, to justify depriving state courts of jurisdiction to vindicate the personal rights of . . . [a] union member. This is emphasized by the fact that the subject matter of the litigation in the present case, as the parties and the court conceived it, was the breach of a contract governing the relations between respondent and his unions. The suit did not purport to remedy or regulate union conduct on the ground that it was . . . an unfair labor practice. . . . 356 U.S. at 621-622, 78 S.Ct. at 925-926.

The cases in which the Court has found state jurisdiction to be pre-empted have been those in which the claims involved arose from, or would directly affect, the relationship of labor to management, the terms and conditions of employment or the collective bargaining process structured by the National Labor Relations Act.[2]

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[2]E.g., *Local 100, United Ass'n of Journeymen, etc. v. Borden*, 373 U.S. 690, 697, 83 S.Ct. 1423, 1427, 10 L.Ed.2d 638 (1963) in which the Court held that an action focused "principally, if not entirely" upon a union's determination of plaintiff's employment relationship with management was a matter within the jurisdiction of, and remediable by, the National Labor Relations Board.

This Court already has defined the boundaries of federal pre-emption with sufficient particularity for adjudication of this case. Petitioners have made no argument of federal-state conflict which has not already been considered and rejected by this Court. The lower courts, in this action, have followed a rule clearly set forth in this Court's prior decisions, which precludes any necessity of certiorari.

3. SECTION 501(a) OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT CANNOT BE CONSTRUED TO PREVENT ENFORCEMENT OF THIS JUDGMENT.

Petitioners argue at Point 2 (pp. 12-18) of their petition that 29 U.S.C. §501(a), admittedly an anti-embezzlement statute, prevents the BLF&E from paying the judgment against it in this action.

The argument that Congress, by enacting Section 501 (a), intended that a trade union could override a proper adjudication of its liability and unilaterally resist compliance with a final judgment determining a member's personal rights against it hardly deserves comment. Indeed, Congress, at the same time it enacted Section 501(a), also enacted 29 U.S.C. §411(4) which states:

> No labor organization shall limit the right of any member thereof to institute an action in any court . . . irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding. . . .

Congress certainly did not intend to guarantee union members the right to initiate legal proceedings while denying them the right to enforce the result of those proceedings.

The balance of petitioner's Point 2 is devoted to the argument that Section 501 effectively gives a union the un-

reviewable power to refuse to honor contracts with its members by interposing what it claims to be a union constitutional objection to the contract. This proposition is as lacking in merit as petitioners' presentation of it is lacking in authority. Petitioners' claim is utterly repugnant to the letter and spirit of Section 411(4).

IV. CONCLUSION

The petition asks that the Court grant a writ of certiorari to determine that a trade union member, having entered into a contract with his union, is without recourse to any forum for adjudication of his rights under that contract save one — the NLRB — which admittedly is without legal power to grant a remedy for breach of contract. In the alternative, petitioners urge that a union which is found to have breached a contract with its members and to have violated its fiduciary duty to those members is immunized from liability for its breach by — ironically — an anti-embezzlement section of the Labor-Management Reporting and Disclosure Act.

The law of labor relations has advanced altogether too far for a claim that union members effectively are without meaningful protection for their personal rights to merit consideration by this Court.

The Petition for Writ of Certiorari is without merit. and should be denied.

Dated this 1st day of June, 1970.

Respectfully submitted,

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